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Serial No. 09/622,830
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: MANFRED ELZENBECK
Serial No.: 09/622,830 Group Art Unit: 3636
Filed: OCTOBER 18, 2000 Examiner: Vu, Stephen A.
Title: BEDSTEAD

SUPPLEMENTAL APPEAL BRIEF

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Sir:

On June 6, 2003, Appellants appealed to the Board of Patent Appeals from the final rejection of claims 15-28, 42 and 43. The following is a Supplemental Appeal Brief submitted pursuant to 37 C.F.R. §1.192 and pursuant to the Patent Office Action of January 6, 2004, instituting a new grounds of rejection.

REAL PARTY IN INTEREST

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RELATED APPEALS AND INTERFERENCES

There are no interference or appeal proceedings known to Appellant or Appellant's legal representative, which will directly affect or be directly affected by to have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

This application currently contain claims 15 to 33 and 42, 43 with claims 34-41 having been cancelled and claims 29-33 withdrawn from consideration.

STATUS OF AMENDMENTS

Subsequent to the Final patent Office Action of January 6, 2003 no amendments have been submitted by Appellants. A Response was filed on May 6, 2003 and a subsequent Advisory Action of May 27, 2003 indicated that claims 15-18 stand rejected under 35 U.S.C. 102 and claims 19-22 and 42-43 stand rejected under 35 U.S.C. 103. A new Office Action of January 6, 2004, withdraws the previous rejection and instituted a new rejection of the same claims using a newly cited and applied second reference (GB 2038382).

SUMMARY OF THE INVENTION

The lounge chair of the present invention includes a frame with spring elements held by the frame. The spring elements form the supporting surface

covering the frame. With the present invention a lounge chair can also serve as a bed frame in a simple construction wherein the spring bearing pressure is provided over the entire resting surface without separate coupled spring elements distributed on the surface. The present invention provides this improvement by using a spring element made of a textile structure with elastic threads in the form of knitting or woven fabric made of synthetic threads and held under prestress at least at the longitudinal bars of the frame. The stretching of the textile material (straining) is such that the stress is substantially different in one section than in another section. Both sections run lengthwise to the longitudinal bars. Independent claim 15 is illustrated, for example, by Figure 5 wherein the spring elements are formed as the elastic textile structure 4, which, when secured to the longitudinal bars 5, provides a prestrained or prestretched condition between the longitudinal bars to change the shape of the textile structure for to provide prestress. Additionally claim 15 provides that a first prestress of the textile structure is at right angles to the longitudinal bars in a first section and that this first prestress is substantially different from a second prestress of the same textile structure at a right angle to the longitudinal bars in the second section. Illustrated in Figure 5 is a first section which may be, for example, the widest portion of the material 4 which needs to be stretched or strained by distance ("s") whereas another section may be represented by the narrowest portion of the material 4 where the material has to be stretched by

a distance of "s" + "S_x". The two different stretching lengths provide the different stretching of the materials as defined by claim 15.

ISSUES

The first issue to be decided by the Board of Appeals is whether claims 15-18 are properly rejectable under 35 U.S.C. 103 as obvious to the reference to Baker U.S. Patent No. 2,127,710 in view of the newly applied reference GB 2038382 hereinafter referred to as GB patent. The second issue to be decided is whether claims 19-22 and 42-43 are properly rejectable under 35 U.S.C. 103 as unpatentable over the reference to Baker U.S. Patent No. 2,127,710 in view of Abu-Isa et al. U.S. Patent No. 4,869,554 and the GB patent. The final issue to be decided is whether claims 23-28 are properly rejectable under 35 U.S.C. 103 as unpatentable over Baker in view of Bartz U.S. Patent No. 3,636,573 and the GB patent.

GROUPING OF THE CLAIMS

Appellants submit that claims 15-18, 23-28 and 42 and 43 do not stand or fall together with respect to any to the rejections under 35 U.S.C. 102 and under 35 U.S.C. 103.

ARGUMENTS

Appellant's traversal of the rejection is based on the existence of features within independent claims 15 which are not shown by the references of. Dependent claims 16-33 and 42-43 provide other features which are also not available from the references of record and are not obvious variations resulting from any obvious combination of these references.

Independent claim 15 requires that the chair have both longitudinal and transverse bars and that the spring element, which are held by the frame, are elastic textile structure and more particularly synthetic threads which are held under prestress between the longitudinal bars and form a supporting surface covering the frame. A first prestress of the textile structure 4 at a right angle to the longitudinal bars in a first section is substantially different from a second prestress of the textile structure at a right angle to the longitudinal bars in the second section.

The reference to Baker U.S. Patent No. 2,127,710 provides a construction for a bottom structure for furniture having different degrees of elasticity at different portions. These different degrees of elasticity are formed by the perforations 8 along the sides with another group of perforation 10 between the mid-length of the bottom and the other end. The areas AB are formed to correspond to certain portions of a persons body such as the shoulder, depending on which direction a person lies on a cot. In contrast to the presently claimed invention defined by claim 15 Baker does

not use or contemplate an elastic textile structure which is stretched or strained beyond its normal prestressed dimensions between longitudinal bars where the prestressed is different in various sections transverse to the longitudinal bars. According to the present invention it can be seen from Figure 5 that the prestressed textile material 4 has a curved contour so that when the material is stretched or strained to be attached to the bars 5, the material does not retain its original prestrained or prestressed condition. The reference to Baker, as shown in Figure 2, is not prestrained or prestretched in any measurable manner. The shape of the material is essentially the same both before and after applying it to the frame. If the material would be prestrained or prestretched, the holes 7, 8, 9 and 10 would not be aligned and/or the holes would not be symmetrical because of the stretching. Additionally materials at sections 23 and 26 would not have the semicircular configuration because of stretching of the material. Claim 15 specifically defines the textile structure as having a first prestressed section at a right angle to the longitudinal bars and a second prestressed section, also at a right angle to the longitudinal bars, where the second prestressed section has a substantially different prestress.

In accordance with the Examiner's indication in the Final Patent Office Action the bars 1-4 of Baker "hold the spring elements in an out-stretched positioned to provide a substantially pre-strained condition". Appellants strongly urge that the bed bottom of Baker is not prestrained or prestressed because it is not

stretched beyond its original shape. Applicants submit that even if it is considered that the material of Baker is stressed by some “infinitesimal” amount, it is certainly not sufficient to meet the requirements of independent claim 15 wherein the pre-stressed on a first section is “substantially different” from a second pre-stressed of the textile structure which are both defined as being at right angles to the longitudinal bars. Additionally the material of Baker has an elastic characteristic which is preferably rubber and/or a rubber composition whereas the presently claimed invention requires “an elastic textile structure having synthetic threads”. No accepted definition of rubber or a rubber composition qualifies as an elastic textile structure having synthetic threads.

The British patent GB 2038382 concern an elastic textile product with length wise extending chains of meshes which extend resiliently and stretchable threads 8 which can be made of rubber. The resiliently stretchable threads pass through selective meshes in the mesh chains in order to prevent stretching which causes permanent deformation.

The rejection of January 6, 2004, indicates that the GB reference is cited for teaching an elastic textile product having rubber threads 8 and polyester 7 and concludes that it would be obvious to one of ordinary skill in the art to use an elastic textile product with rubber threads and polyester in lieu of the rubber material of Baker in order to provide an improved resilient stretchable fabric to be tensioned between the bars.

Appellant's submit that there is no showing in the GB patent with respect to meeting the requirements of independent claim 15 of a pre-stressed first section which is pre-stressed "substantially different" from a second pre-stressed section of the textile structure which are both defined as being at right angles to the longitudinally bars. Therefore if, for purposes of argument, the references were to be combined there is still no showing of this specific limitation of independent claim 15. Additionally, there is no indication that such combination as proposed by the Examiner would be obvious to one of ordinary skill in the art except by hindsight reconstruction using Appellants' disclosure.

The new rejection in the Office Action of January 6, 2004, contains a statement that the first pre-stress of the rubber material of Baker is at a right angle to the longitudinally bars in the first section and is different from a second pre-stress of the rubber material at a right angle to the longitudinally bars in the second section. This is the same statement as the Final Rejection and, as indicated above, the bed bottom of Baker is not pre-strained or pre-stressed because it is not stretched beyond its original shape and it is certainly not sufficient to meet the requirements of independent claim 15 wherein the two stresses are "substantially different".

The secondary reference to Abu-Isa et al. U.S. Patent No. 4,869,554 concerns a vehicle seat assembly with a tube structure for the seat and the back rest frame. The back rest cushion is a woven mat. This reference, according to the rejection,

has been cited for teaching the placement of cushions on a textile structure. The acceptance of the statement of the rejection for the showing of Abu-Isa et al. does nothing toward advancing the rejection of independent claim 15 as claims 19-22 and 42-43 each depend from and contain all the limitations of independent claim 15 and Abu-Isa et al. adds nothing toward meeting the claim limitations of independent claim 15 with respect to those features which distinguish over the reference to Baker.

The reference to Bartz has been cited for teaching a foldable mattress support with an articulated axle for allowing the head section to be pivoted relative to the foot section. As a result claims 23-28 have been rejected over the combination of Baker and Bartz under 35 U.S.C. 103. The reference to Bartz adds nothing to meeting the claim limitations of independent claim 15 from which claims 23-28 depend and contain all of the limitations thereof. Thus claims 23-28 are also submitted as being allowable.

As discussed above, the British patent GB 2038382 has no disclosure of the independent claim structure and additionally adds nothing toward meeting the claim limitations of the dependent claims 19-22, 42-43 and 23-28 even if combined with Baker, Abu-Isa et al. and Bartz as stated in the rejection.

Claim 16 limits independent claim 15 by defining that the outer contours of the textile structure are held under prestress at the longitudinal bars and at the transverse bars and claim 17 defines that supports are provided beneath the textile

structure. Claim 18 further limits claim 17 by defining that the supports are attached to rails movable in a direction of the longitudinal bars. Each of these features of claims 16-18 are separately patentable from independent claim 15 and do not stand or fall together. Claims 23-27 limit independent claim 15 by indicating that the longitudinal bars are designed to be foldable and form articulated axles for the surface. Claim 28 defines that the synthetic threads are polyester threads with a 25% elastomer polyester content. Claims 42 and 43 define the shape of the cushions with respect to knee support and/or lordosis supports (back supports). Each of these limitations of claims 42-43 are separately patentable from independent claim 15 and thus claims 16-18, 23-28 and 42-43 as well as independent claim 15 do not stand or fall together as they contain separately patentable features. It is to be noted that claims 29-33 has been currently withdraw from consideration.

APPENDIX

An appendix containing a copy of the claims is attached hereto.

CONCLUSION

Therefore, in view of the distinguishing features between the claimed invention and the references as discussed above, Appellants respectfully request

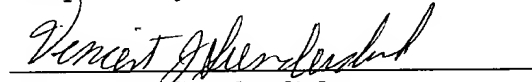
Attorney Docket No.: 037128.49096US
Serial No. 09/622,830
PATENT

that the decision of the Examiner in finally rejecting claims 15-28 and 42-43 should be **REVERSED**.

This Appeal Brief is accompanied by a two month Extension of Time to respond to the Office Action of January 6, 2004 but is not accompanied by a payment of the Appeal fee. The Appeal fee of \$330.00 was filed with the original Appeal fee on October 6, 2003 and, in accordance with MPEP §1208.02, Applicants hereby request reinstatement of the Appeal, accompanied by the Supplemental Appeal Brief with no amendments or affidavits. However, the Commissioner is authorized to charge any deficiency or credit any overpayments, to Deposit Account No. 05-1323 (Docket No. 037128.49096US). A triplicate copy of this Appeal Brief is attached.

June 7, 2004

Respectfully submitted,



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APPENDIX

15. A lounge chair with a frame having longitudinal and transverse bars and with spring elements held by the frame, said spring elements being in the form of an elastic textile structure held under a pre-strained condition between the longitudinal bars to change the size of said textile structure to provide an associated prestress of the textile structure and forming a supporting surface covering the frame wherein the textile structure is made out of synthetic threads, and wherein a first prestress of the textile structure at a right angle to the longitudinal bars in a first section is substantially different from a second prestress of the textile structure at a right angle to the longitudinal bars in a second section.

16. Lounge chair according to Claim 15, wherein outer contours of the textile structure are held under prestress at the longitudinal bars and at the transverse bars.

17. Lounge chair according to Claim 15, wherein supports are provided beneath the textile structure.

18. Lounge chair according to Claim 17, wherein the supports are attached to rails which are movable in a direction of the longitudinal bars.

19. Lounge chair according to Claim 15, wherein cushions can be placed on the textile structure.

20. Lounge chair according to Claim 16, wherein cushions can be placed on the textile structure.

21. Lounge chair according to Claim 17, wherein cushions can be placed on the textile structure.

22. Lounge chair according to Claim 18, wherein cushions can be placed on the textile structure.

23. Lounge chair according to Claim 15, wherein the longitudinal bars are designed to be foldable and form articulated axles for the surface for lying.

24. Lounge chair according to Claim 16, wherein the longitudinal bars are designed to be foldable and form articulated axles for the surface for lying.

25. Lounge chair according to Claim 17, wherein the longitudinal bars are designed to be foldable and form articulated axles for the surface for lying.

26. Lounge chair according to Claim 18, wherein the longitudinal bars are designed to be foldable and form articulated axles for the surface for lying.

27. Lounge chair according to Claim 19, wherein the longitudinal bars are designed to be foldable and form articulated axles for the surface for lying.

28. Lounge chair according to Claim 15, wherein the synthetic threads are polyester threads with a 25% elastomer polyester content.

29. (Withdrawn) Lounge chair according to Claim 15, wherein the textile structure is made up of two structures wherein one of the two structures lies at a distance below the other of the two structures.

30. (Withdrawn) Lounge chair according to Claim 29, wherein each of the textile structures is tightly held by a respective edge to the longitudinal and transverse bars.

31. (Withdrawn) Lounge chair according to Claim 29, wherein the distance between the two textile structures is predetermined in such a way that at

least a part of a surface of one of the two structures rests on at least a part of a surface of the other of the two structures when there is a load.

32. (Withdrawn) Lounge chair according to Claim 29, wherein the textile structure is designed as a tube pulled over rods.

33. (Withdrawn) Lounge chair according to claim 32, wherein the rods are mounted such that they can be rotated and are fastened to the longitudinal bars.

42. Lounge chair according to claim 19, wherein the cushions are in the form of lordosis supports.

43. Lounge chair according to claim 19, wherein the cushions are in the form of knee joint supports.